

If a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a GIL.)

July 18, 2006

Dear Xxxxx:

This letter is in response to your letter dated September 6, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC sells nutritional, dietary, and skin care products through a multi-level network of independent distributors. ABC is considered an 'MLM' or multi-level marketer such as XYZ. Our physical location is in CITY/STATE. ABC charges sales tax based upon the address to which we ship and based upon full retail price. ABC files one consolidated state sales/excise tax return in lieu of each independent distributor filing a separate return with your state.

While we have obtained previous rulings from your state on the taxability of our products, we would like to ensure that our sales tax collection procedures are in compliance with all current law. Please provide us with letter rulings or binding opinions on the taxability of our nutritional and dietary products based upon the enclosed product labels.

Please send the letter rulings or binding opinions to my attention at the address provided. If you need additional information, please contact me.

Thank you for your assistance in this matter.

#### **DEPARTMENT'S RESPONSE:**

Please refer to the Department's regulation at 86 Ill. Adm. Code 130.550 regarding "Filing of Returns for Retailers by Suppliers Under Certain Circumstances." This regulation sets out the

Department's policy governing agency agreements. With an agency agreement, a manufacturer or wholesaler whose products are sold by numerous distributors in Illinois assumes the responsibility of collecting and remitting Retailers' Occupation Tax on behalf of all sales made by distributors.

However, if distributors who are affected make written objection to the Department, such distributors may opt out of the agreement and remit their own taxes. The Department utilizes a standard "Agency Agreement" with wholesalers and manufacturers that wish to enter into such arrangements. Under an agency agreement, a manufacturer or wholesaler remits tax on its sales to distributors, based upon the suggested retail price of the items sold by its distributors. Distributors participating in this type of arrangement are not required to register with the Department, file returns or remit tax because those obligations are assumed by the manufacturer or wholesaler. Consequently, when wholesalers or manufacturers enter into agency agreements with the Department, they become retailers subject to Retailers' Occupation Tax, and are the entities to which the Department will look for payment of the tax.

In addition, you may find helpful information by referring to 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see at Section 130.310(b)(1), "[a] food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See Section 130.310(c)(1). Under the above stated definitions, dietary supplements could be classified as food or they could be classified as drugs if the products purport on the label to have medicinal qualities.

Tangible personal property that does not meet the definitions of food, drugs, medicines and medical appliances, or is food prepared by the vendor for immediate consumption, is taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b). The tax rate is fixed by the location of the seller, not the delivery location.

However, it is important to note that distributors under an agency agreement incur Retailers' Occupation Tax liability, including local occupation tax liability, where the contract to purchase the tangible personal property is entered into. If the items are shipped to the same address location as where the contract is entered into, then that location would determine the proper jurisdiction for application of Retailers' Occupation Tax and local occupation taxes. If, on the other-hand, the shipping address is different from the location where the contract was entered into, then you should use the location where the contract was entered into as the proper location for determination of tax liabilities. You are correct that Retailers' Occupation Tax would apply to the full retail price.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

We have reviewed the product labels attached to your request. We regret that we are unable to respond to your request. We believe the regulations are sufficiently clear to enable you determine your tax liabilities with a reasonable degree of certainty. If, however, you find that the Department's regulations are unclear, please present this issue to the Department, indicating why you believe you

are unable to apply the regulation, and we will attempt to respond to your request. In addition, many of the issues raised in your request have been addressed through our "Sunshine Letter" rulings which may be found on the Department's internet website under the heading of "Laws/Regs/Rulings."

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding yourfactual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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